HONOURABLE SRI JUSTICE ASHUTOSH MOHUNTA

WRIT PETITION No.21837 OF 2011 .

DATED 2nd March, 2012

BETWEEN
Dr. Abul Hasan Ashraf

…Petitioner

And

Union of India, rep. by its Secretary,
Ministry of Health & Family Welfare,
New Delhi and ors

….Respondents.

HONOURABLE SRI JUSTICE ASHUTOSH MOHUNTA

WRIT PETITION No. 21837 of 2011

ORDER:

The Apex Court through its order dated 13.05.2011 in Writ Petition(C) No. 33 of 2009 directed all the concerned to conduct and complete the election process to the Central Council of Indian

Medicine (for short 'CCIM') by 30th August, 2011. The Government of India communicated to the first respondent through a Gazette Notification dated 7.2.2011 notifying the number of seats in 'Ayurveda' and 'Unani' in the State of Andhra Pradesh. Thereafter, the fourth respondent issued notification on 29.4.2011 for conducting elections in the State of Andhra Pradesh to elect two persons for Ayurveda, one person for Unani, as Members of CCIM and therefore notice was given under Rule 7 of the Indian Medicine Central Council (Elections) Rules, 1975, fixing the dates of various stages of election, such as, date of receipt of nominations; receipt of ballot papers; scrutiny of nomination papers; withdrawal of the nominations; receipt of the ballot papers; scrutiny of outer covers; counting of votes; etc.,. Accordingly, the election process has commenced on 29.4.2011 and concluded on 23.07.2011 by declaring the results of 'Unani' system before the due date as fixed by the Apex Court.

The petitioner herein was one of the contestants in the aforesaid election to CCIM (Unani). He got 342 votes whereas the fifth respondent who was declared successful got 414 votes against the petitioner. It is the grievance of the petitioner that the fourth respondent grossly violated the rules in

conducting the election process; and that he had not followed the due procedure in conducting the election and declared the fifth respondent as successful candidate. It is the case of the petitioner that as per Section 5(2) of the Indian Medicine Central Council Act, 1970 (for short 'the Act'), no person may at the same time serves as a member in more than one capacity, whereas the fifth respondent who is enrolled in Maharashtra Council of Indian Medicine at the relevant time, contested for membership in the election from the State of Andhra Pradesh and that contrary to Rule 13(7) of the Indian Medicine Central council (Election)Rules, 1975 (for short 'the Rules'), multiple votes were given to some of the members though each elector shall be given only one vote. It is his further case that the voters list provided by the third respondent is out-dated and contained names of even dead persons and the persons whose membership expired long back and that it also contained double registrations. It is the complaint of the petitioner that the fourth respondent had accepted the votes sent by the electors on their own cost or delivered in person in his office contrary to the due procedure. It is also averred that the fourth respondent had failed to protect the votes in the ballot box from pouring the ink and damage therefrom. It is

further stated that the Returning Officer had committed serious lapses in verifying as to whether the fifth respondent is enrolled to the Indian Medicine; he resided in the State of Andhra Pradesh and further he failed to verify the eligibility of the candidates to the election in question. Making allegations as such, the petitioner has sought for issuance of a Writ of Mandamus declaring the nomination of the fifth respondent and his election as null and void and against the provisions of Section 5(1) of the Act and the Rules made thereunder; and consequently declaring the petitioner as elected to the post of member of the Central Council of Indian Medicine.

A counter affidavit is filed on behalf of respondents 1 to 4 denying the averments made in the affidavit filed in support of the Writ Petition. The sum and substance of the averments made in the counter is that the election process was conducted strictly in accordance with the due procedure contained in the Act and as per the schedule given in the notification dated 29.04.2011. It is stated in the counter that any dispute regarding the election shall be raised before the Central Government as provided in Section 4(2) of the Act and the petitioner without availing such alternative remedy, prematurely

invoked the jurisdiction of this Court and hence the Writ Petition is not maintainable and liable to be dismissed. It is further stated in the counter that the alleged dual registration at the time of scrutiny of nomination of the fifth respondent has not been brought to the notice of the fourth respondent or even till the date of conclusion of election process by declaring the results on 23.07.2011. After issuing the election notification on 29.4.2011, a meeting was convened on 19.7.2011 in the chambers of the Returning officer with the contesting candidates, who unanimously agreed to take up and complete the election process. The up to date register containing the names of the persons enrolled on the State Register had been duly posted and as per the same the nominations were scrutinized. The petitioner having known the same, did not raise any dispute till the end of scrutiny of the nominations. Regarding the allegation of the petitioner that ink was poured on the ballot box, it is stated in the counter affidavit that a complaint was lodged before the police authorities, Abids, Hyderabad on 19.7.2011 and the said tainted box was sealed on 20.7.2011 and a new box was erected and continued the election process. It has further been stated that the petitioner has not submitted any application raising such objections

which he narrated in the affidavit filed in support of the Writ Petition either to the Returning Officer or to the Central Government at the relevant point of time and that he filed the present Writ Petition after completion of the election process, and as such, the same is belated and therefore liable to be dismissed as not maintainable.

The fifth respondent, who had contested in the elections against the petitioner and who had ultimately been declared as elected, filed counter affidavit denying the averments made in the affidavit filed in support of the Writ Petition. It is stated in the counter affidavit that he has submitted a representation on 14.4.2011 to the Registrar, Maharashtra Council of Indian Medicine, Mumbai to cancel the registration as he had completed the course, as such as on the date of notification dated 29.4.2011 or on the subsequent date of filing the nomination or on the date of polling, he was not a member of the so called Maharshtra Council of Indian Medicine. He stated that though Section 4(2) of the Act provides that where any dispute arises regarding any election to the Central Council, it shall be referred to the Central Government whose decision shall be final, the petitioner has not chosen to avail such alternative remedy and as such the present Writ

Petition is not maintainable and liable to be dismissed. The fifth respondent stated in the same lines as that of the fourth respondent that the petitioner failed to raise any objection at the time of scrutiny of the nominations. He further stated that if the multiple votes were issued to the voters, such violation could have been brought to the notice of the Returning Officer, which the petitioner having failed to do so now cannot turn around and say that the Returning Officer violated Rule 13(7) of the Rules.

Heard both sides. Perused the record.

Section 4(2) of the Act provides that where any dispute arises regarding any election to the Central Council, it shall be referred to the Central Government whose decision shall be final. It is clear from the record that the petitioner has not chosen to avail such alternative remedy for the reasons best known to him to put forth his grievance before the competent authority of the Central Government for redressal. The learned Counsel for the petitioner however submitted that the mechanism provided under Section 4(2) of the Act is ineffective in as much as the Central Government has no role to play in the matter and it is the Returning Officer of the concerned State to conduct the election. In the light of the clear

language used in the provisions of Sub-Section 92) of Section 4 of the Act which in clear terms postulates that ‘any dispute regarding any election to the Central Council shall be referred to the Central Government whose decision shall be final, the above argument of the learned Counsel for the petitioner cannot be countenanced.

Further it is to be seen that a notification dated 29.4.2011 was issued by the fourth respondent showing the various stages of elections to both the Ayuyrveda and Unani systems of Medicine. All the stages of the elections took place as per the date and time notified therein. Though the petitioner has raised objection in this Writ Petition that the voters list is out dated and the fifth respondent is not entitled to contest the election as he has dual membership, nothing prevented the petitioner to bring the same to the notice of the Returning Officer at the time of scrutiny of nominations. The petitioner, it is manifest from the record, failed to do so at the relevant point of time. Even on 19.7.2011 when a meeting was conducted in the chambers of the Returning Officer with the contesting candidates, the petitioner neither raised any such objection as is now raised in this Writ Petition nor did he disagree with the election process. On the other hand, the record reflects that he agreed

unanimously along with the others for the election process as per the notification. It is not denied that having witnessed the entire process of election with the other contesting candidates including the opening of electoral box and scrutiny of outer covers, the petitioner has not raised any objection nor has the process been continued and completed with interruption.

That being so, this Court is of the view that once the final electoral rolls were published and elections were held on the basis of such electoral rolls, it is not now open to the petitioner to challenge the election process on the ground that the electoral rolls were defective. In the back drop of the case, the petitioner cannot be permitted to raise such an objection which he ought not to have raised at the relevant point of time but failed to do so.

The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an election at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power. It clearly bars any writ petition challenging the impugned election on the ground that the electoral rolls on the basis of which

the impugned elections were held were invalid. {See: Kabul Singh v. Kundan Singh {[1970]1SCR845}.

That being so, the finality of the electoral roll cannot be assailed in a proceeding challenging the validity of an election.

For the foregoing discussion, I do not see any merit in the Writ Petition.

The Writ Petition is accordingly dismissed. There shall be no order as to costs.

JUSTICE ASHUTOSH MOHUNTA

Dated 2nd March, 2012.
Msnr.